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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

JANET RENO, *et al.*,

Appellants,

v.

AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Appellees.

On Appeal From The United States District Court
For The Eastern District Of Pennsylvania

BRIEF *AMICI CURIAE* OF ENOUGH IS ENOUGH, THE SALVATION ARMY, NATIONAL POLITICAL CONGRESS OF BLACK WOMEN, INC., THE NATIONAL COUNCIL OF CATHOLIC WOMEN, VICTIMS' ASSISTANCE LEGAL ORGANIZATION, CHILDHELP USA, LEGAL PAD ENTERPRISES, INC., FOCUS ON THE FAMILY, THE NATIONAL COALITION FOR THE PROTECTION OF CHILDREN AND FAMILIES *(and other amici listed on inside cover)* IN SUPPORT OF APPELLANTS

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CASES

ACLU v. Reno, 929 F. Supp. 824 (E.D. Pa. 1996) ..... *passim*
Brown v. Bd. of Education, 347 U.S. 483 (1954) 13
Butler v. Michigan, 352 U.S. 80 (1957) 3
City of Los Angeles v. Preferred Commun. Inc., 476 U.S. 488 (1986) 6
Denver Area Educ. Telecomm. Consortium, Inc. v. F.C.C. 116 S.Ct. 2374 (1996) 28, 29
FCC v. Pacifica Found., 438 U.S. 726 (1978) 6
Ginsburg v. New York, 390 U.S. 629 (1968) 19
Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) . 6
Jacobellis v. Ohio, 378 U.S. 184 (1964) 5
Kovacs v. Cooper, 336 U.S. 77 (1949) 6
Miller v. California, 413 U.S. 15 (1973) 5
New York v. Ferber, 458 U.S. 747 (1982) 6, 28
Paris Adult Theater I v. Slaton, 413 U.S. 49 (1973) 10
Sable Comm., Inc. v. F.C.C., 492 U.S. 115 (1989) 5, 6
Turner Broadcasting Sys., Inc. v. FCC, 114 S.Ct. 2445 (1994) 6, 28
United States Department of Justice, Post Hearing Memorandum of Points and Authorities, ACLU v. Reno, 929 F. Supp. 824 (1996) 3
United States v. National Treasury Employees Union, 115 S.Ct. 1003 (1995) 5, 28

STATUTES

47 U.S.C. § 223
§ 223 (a)(1)(B) 26

OTHER AUTHORITIES

Bergman, Jerry, Ph.D., *The Influence of Pornography on Sexual Development: Three Case Histories*, IX Family Therapy 3, 1982 10

Brooks, Gary R., Ph.D., *The Centerfold Syndrome* (1995) 12
Burgess, Ann, Ph.D., *Pornography—Victims & Perpetrators, Symposium on Media Violence & Pornography*, Proceedings Resource Book and Research Guide (D. Scott, ed., 1984) ... 18
Carnes, Patrick, *Don't Call it Love: Recovery from Sexual Addictions* (1991) 14
Clapes, Anthony L., *The Wages of Sin: Pornography and Internet Providers*, Computer Lawyer, July 1996 ..... 26, 27
Clark, Charles S., *Regulating the Internet*, CQ Researcher, June 30, 1995 9
Clark, L. & D. Lewis, *Rape: The Price of Coercive Sexuality* (1977) 16
Clary, Susan, *2 Teens Charged in Computer Porn Case* St. Petersburg Times, May 21, 1996 20
Cline, Victor B., Ph.D., *Pornography's Effects on Children and Adults* (1994) 11
Cline, Victor, Ph.D., *Pornography Effects: Empirical & Clinical Evidence* (1990) 14, 18
Clinton, President William J., *State of the Union Address*, (Jan. 23, 1996) 22
Davis, K. E., and G. N. Braucht, *Exposure to Pornography, Character and Sexual Deviance*, Technical Reports of the Commission on Obscenity and Pornography, Vol. 7, 1970 ... 17
Donnerstein, Edward, *Aggressive Erotica and Violence Against Women*, 19(2) Journal of Personality and Social Psychology (1980) 17
Donnerstein, Edward, *Statement Made at Public Hearing on Ordinances to Add Pornography as Discrimination Against Women*, Minneapolis City Council, Sess. 1, Dec. 12, 1983 ..... 15, 18
Enhanced CU-SeeMe at HTTP://www.cu-seeme.com. *in White Pine Software Homepage* at HTTP://www.wpine.com. 25
Eysenck, H. J., *Robustness of Experimental Support for the General Theory of Desensitization, in Pornography and Sexual Aggression* (1984) 14
Facts in Brief, The Alan Guttmacher Institute (1994) 16, 17

Flint, Anthony, *Skin Trade Spreading Across U.S.*, Boston Sunday Globe, Dec. 1, 1996 9
Garcia, Luis T., *Exposures to Pornography and Attitudes About Women and Rape: A Correlative Study*, Vol. 22, 1853, AG (1986) 15
Harrell, Ann, *Library Net Access Up to Parents*, Lincoln J. Star, Jan. 7, 1997 21
Katayama, Fred, *The Not-So-Worldly Web*, CNN: The Financial Network (Dec. 17, 1996) at HTTP://cnnfn.com/hotstories/deals/9612/17/worldwide__web__pkg/index.htm) 2
Linz, Daniel, *Exposure to Sexually Explicit Materials and Attitudes Toward Rape: A Comparison of Study Results*, 26(1) Journal of Sex Research (Feb. 1989) 16
Log-on Data Corporation, *White Paper on X-Stop*, October 1996 8
Malamuth, Neil M., & Joseph Ceniti, *Repeated Exposure to Violent and Non Violent Pornography: Likelihood of Raping Ratings and Laboratory Aggression Against Women*, 12 Aggressive Behavior, UCLA, (1985) 11, 15
Marshall, W. L., Ph.D., *Pornography and Sexual Offenders*, Pornography: Research Advances and Policy Consideration (D. Zillmann & J. Bryant, eds., 1989) 19
Mason, John O., Ph.D., Dr. P. H., Assistant Secretary for Health, Address to the Religious Alliance Against Pornography, The Harm of Pornography (Oct. 26, 1992) 11
McGaugh, James L., Univ. of Calif., Irvine, *Preserving the Presence of the Past*, 38 American Psychologist (1983) 12
Mendels, Pamela, *Newsgroup Smut Poses Campus Quandary*, N.Y. Times, Dec. 29, 1996 26
Montgomery, Kathryn, & Shelley Pasnick, Center for Media Education, *Web of* (Mar. 1996) 3, 20
Nielsen Media Research Interactive Services, *Internet Hyper-Growth Continues, Fueled by New, Mainstream User*, Aug. 13, 1996, at HTTP://www.nielsen.com 2, 8
Nielsen Media Research Interactive Services, *The Commercenet/Nielsen Internet Demographics Survey*, (Aug. 13, 1996) at HTTP://www.nielsen.com 2

Oversight Hearing on the High Performance Computing and Communications Program and Uses of the Information Highway, before the Subcomm. on Science, Technology, and Space of the Senate Comm. on Commerce, Science, and Trans., 104th Cong., 1st Sess., 26 (1995) 2
Penthouse Magazine Homepage at HTTP://www.penthouse.mag. 8
Postman, Neil, *The Disappearance of Childhood* (1994) 13
QNSnet Terms & Conditions, at HTTP://www.qna.net.80/pricing/termpass.htm 24
The Report of the Surgeon General's Workshop: Pornography and Public Health, June 22-24, 1986 18
Rose, Lance, *Netlaw* (1995) 24
S. Rep. No. 102-372, 102nd Cong., 2nd Sess. 23 (Aug. 12, 1992) (Pornography Victims Compensation Act of 1992, SenateComm. on the Judiciary) 17
Safe Computing, Internet, Sept. 1996 9
Schmidt, Howard A., 52 Government Exhibits Appended to Direct Testimony Declaration, April 9, 1996 24
Simons, John, *The Web's Dirty Secret*, U.S. News & World Report, Aug. 19, 1996 ..... 7, 8, 25
Tejada, Carlos, *Are My Kids Safe*, Wall Street Journal, Dec. 9, 1996 20
Utah Digital Signature Act, 46 Utah Code Ann. Ch. 3 (1996) . 25
Vesely, Rebecca, *Library Blocks Porn, and May Block Rights*, Jan. 7, 1997, at HTTP://www.com/news/story/1289 html ... 21
Westside (Omaha, NE) Community School's Application for Student Internet Account, *Statement of Rights and Responsibilities* (Amended May 2, 1994) 22
Zillmann, D., *Effects of Prolonged Consumption of Pornography*, in *Pornography: Research Advances and Policy Considerations* (Erlbaum, 1989) 16, 17

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BRIEF *AMICI CURIAE* IN SUPPORT OF APPELLANTS

INTEREST OF *AMICI CURIAE*

Pursuant to Rule 37.3 of this Court, Enough Is Enough, *et al.* respectfully submit this brief *amici curiae* in support of Appellants. Written consent to the filing of this brief has been granted by counsel for all parties. Letters of consent have been lodged with the Clerk.

Amici comprise a broad coalition of public interest groups and individuals committed to advocating legal and social reforms that advance and defend women and children against sexual exploitation, abuse, and degradation. While representing diverse political perspectives, we are agreed that this

this Court's decision in the instant case will directly affect the welfare of our society. A detailed description of the interests of those represented herein is set forth in the Appendix. We believe that our perspective will complement the briefs of the parties and assist the Court in the sound resolution of this case.

SUMMARY OF ARGUMENT

The Internet is transforming how Americans communicate and learn.[1] Because children often demonstrate a proficiency in computer skills surpassing that of their parents, the Internet is quickly becoming a medium of the young. Indeed, evidence indicates that the Internet is "more powerful in attracting the attention of children and youth than any other prior electronic

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[1] Nielsen Media Research Interactive Services, *Internet Hyper-Growth Continues, Fueled by New, Mainstream Users*, Aug. 13, 1996, at HTTP://www.nielsen.com (reporting that Internet access in the United States and Canadian population is up by 50% from August/September 1995 to March/April 1996); Nielsen Media Research Interactive Services, *The Commercenet/Nielsen Internet Demographics Survey*, (Aug. 13, 1996) at HTTP://www.nielsen.com (reporting that 37 million people, age 16 and older in the U.S. and Canada, have access to the Internet and that among them males compose 66% of Internet users and account for 77% of Internet usage); Fred Katayama, *The Not-So-Worldly Web*, CNN: The Financial Network (Dec. 17, 1996) at HTTP://www.cnnfn.com/hot-stories/deals/9612/17/worldwide_web_pkg/index.htm) (reporting that two-thirds of the world's "on-line" households are in North America and only 15% are in Europe or Asia); *Oversight Hearing on the High Performance Computing and Communications Program and Uses of the Information Highway, before the Subcomm. on Science, Technology, and Space of the Senate Comm. on Commerce, Science, and Trans.*, 104th Cong., 1st Sess. 26 (1995) (noting that in 1994, more personal computers were sold for home use in the United States than television sets and that Internet usage in this country grows by 10% per month).

system."[2] Along with its unique opportunities, however, the Internet carries unique threats. The Department of Justice has succinctly identified the most serious danger:

> Never before in the history of telecommunications media in the United States has so much indecent (and obscene) material been so easily accessible by so many minors in so many American homes with so few restrictions.[3]

Because this unprecedented rise in the quantity of sexually-explicit speech available to children threatens their welfare, the stakes in this proceeding could not be any higher. In a more innocent age the Court was concerned "not to reduce the adult population . . . to reading only what is fit for children." *Butler v. Michigan*, 352 U.S. 380, 381 (1957). Today, unfortunately, the opposite concern is more apt—that we not condemn children to reading only what is fit for adults. In the decision below, the court's response to this concern is troubling. Judge Dalzell, for example, described the Communications Decency Act as a cure worse than the disease, questioning whether Congress had identified a harm in genuine need of treatment: "[H]ere, however, I am hard-pressed even to identify the disease." *ACLU v. Reno*, 929 F. Supp. 824, 881 (1996). Had the district court more carefully considered how sexually-explicit material on the Internet endangers children, the court would not have found that Appellee's constitutional interests so easily outweigh the

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[2] Kathryn Montgomery & Shelley Pasnick, Center for Media Education, *Web of Deception* (Mar. 1996).

[3] *U.S. Department of Justice, Post Hearing Memorandum of Points and Authorities*, at 1, *ACLU v. Reno*, 929 F. Supp. 824 (1996).

Government's compelling interest in protecting children from such harm.

Sexually-explicit material on the Internet poses a unique danger to children, demanding an innovative response from Congress. In its prior decisions, this Court has confirmed Congress's authority to address compelling concerns by enacting laws adapting the application of the Free Speech Clause in a novel communications medium. The Internet's capacity to collect information from numberless sources enables children to view endless amounts of sexually-explicit material without leaving home. As we will show, a significant body of carefully-documented research demonstrates that exposure to sexually-explicit material substantially harms children. Without effective laws to prohibit the distribution of such material to children, many children will suffer the harms we describe. That tragic result cannot be reconciled with Appellee's asserted interest in preserving unrestricted access by children to sexually-explicit materials over the Internet.

The Court can vindicate the Government's compelling interest in protecting children within the limits set by the First Amendment. We urge that the Government's compelling interest in protecting children be given the predominant weight it deserves in this communications medium. A less careful approach by the Court will leave children unprotected in the Internet jungle.

ARGUMENT

I. SETTLED FIRST AMENDMENT PRINCIPLES SUPPORT THE GOVERNMENT'S PROHIBITION OF THE DISTRIBUTION OF SEXUALLY-EXPLICIT SPEECH TO CHILDREN OVER THE INTERNET.

The First Amendment permits Government to regulate sexually-explicit but non-obscene speech to promote a compelling interest where it has chosen the least restrictive means of effective regulation. *See Sable Communications v. FCC*, 492 U.S. 115, 126 (1989). The Government's compelling interest springs from the harms visited upon children from their access to sexually-explicit material. As *Amici* demonstrate below, "the recited harms are real, not merely conjectural," and the regulation will "alleviate these harms in a direct and material way." *United States v. National Treasury Employees Union*, 115 S.Ct. 1003, 1017 (1995). We document herein the kinds of injuries that exposure to sexually-explicit materials inflict on children and show how the CDA provides a necessary and feasible means of protecting children from such harm.

Under this Court's precedents, protecting children from exposure to harmful sexually-explicit materials undeniably qualifies as a compelling state interest. "It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling.'" *New York v. Ferber*, 458 U.S. 747, 756-57 (1982)) (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982)). Moreover, as the Court has explained, "This interest extends to shielding minors from the

influence of literature that is not obscene by adult standards." *Sable*, 492 U.S. at 126. On this score, Justice Scalia has explained that the Government's interest in preventing children from exposure to technically non-obscene sexually-explicit material increases as the category of obscenity comes to be defined more and more narrowly. *See id.* at 132 (Scalia, J., concurring).

Further, where a *communications medium* is being regulated, the characteristics of the specific technology may be assessed in examining the constitutionality of the regulation. *See, e.g., Kovacs v. Cooper*, 336 U.S. 77, 97 (1949); *Turner Broadcasting Sys., Inc. v. FCC*, 114 S.Ct. 2445, 2456 (1994); *F.C.C. v. Pacifica Found.*, 438 U.S. 726, 749 (1978) ("We have long recognized that each medium of expression presents special First Amendment problems") (citation omitted); *City of Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 496 (1986) ("Different communications media are treated differently for First Amendment purposes."). This line of cases leaves room to tailor Free Speech doctrine to the attributes of a particular communications medium such as the Internet.

Against the background of these doctrinal parameters, we consider below the nature of the Internet, its accessibility to children, the harmful effects of indecent and obscene materials on children, and the feasibility of technological protections. This analysis will demonstrate that the district court gravely undervalued the nature of the Government interest at stake and, therefore, erred in its assessment of the CDA's constitutionality. Given the paramount stature of that interest, the Court should rule that the Government's interest in protecting children in the context of this communications

medium outweighs countervailing concerns. By upholding the narrowly tailored provisions of the CDA, this Court will clarify that Congress did not infringe upon the values protected by the First Amendment when it acted to protect children against harmful access to, or receipt of, patently offensive, sexually-explicit materials on the Internet.

II. MANY CHILDREN WILL SUFFER GRAVE HARM FROM EXPOSURE TO SEXUALLY-EXPLICIT SPEECH ON THE INTERNET UNLESS ITS DISTRIBUTION OR DISPLAY TO CHILDREN IS RESTRICTED BY LAW.

A. *The Internet Contains Virtually Endless Amounts of Sexually-Explicit Speech that Has Attracted a Large Audience and Produced Enormous Revenues*

By allowing a user to collect information from numberless sources, the Internet in effect gathers together an ocean of sexually-explicit speech, ranging from the mildly titillating to unqualified hard-core pornography. The Web contains more than 600 merchant sites for pornography.[4] This number, however staggering it might first appear, continues to grow. Log-on Data Corporation's Internet patroller, known as Mud Crawler, reports finding approximately 39 new pornographic Web sites *per day*.[5]

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[4] John Simons, *The Web's Dirty Secret*, U.S. News & World Rep., Aug. 19, 1996, at 52.

[5] Log-On Data Corporation, *White Paper on X-Stop*, Oct. 1996.

This vast new pornography resource has already attracted a remarkably large and devoted audience. *U.S. News and World Report* found in 1996 that "about one-fifth of the Web audience . . . says it regularly seeks out adult material online."[6] According to a Nielsen Media Research survey, *Penthouse* magazine has the most popular World Wide Web site on the Internet, registering more than two million visits during a period from December 21, 1995 to January 20, 1996.[7] Like most such sites, *Penthouse* places no restrictions that prevent children from viewing its lurid images.[8]

The prospect of so many eager voyeurs has presented the merchants of sex with an unprecedented commercial opportunity, and they have been cashing in with enormous success. In December, 1996, the *Boston Sunday Globe* reported that pornographic entertainment on the Internet constituted the third largest sector of sales in cyberspace, with

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[6] Simons, U.S. News & World Rep., Aug. 19, 1996, at 52.

[7] Nielsen Media Research Interactive Services, *Internet Hyper-Growth Continues, Fueled by New, Mainstream Users*, Aug. 13, 1996, at HTTP://www.nielsen.com

[8] From Penthouse Magazine's homepage the online visitor can click on a link labeled "hardcore." The "hardcore" link offered: "HARDCORE MANIA: The Internet's only channel to true hardcore action!" A paragraph read: "There is no content beyond this point that should be accessed by children or those being under the legal age in your State, Province or Country! We are not responsible for those traveling through our site beyond this point." Without any credit card or other proof of age requirement to bar them, any child old enough to read a computer screen and operate a mouse could see, among other things, a close-up color picture of a nude woman orally copulating with a nude man. Other images were equally graphic. *See* Penthouse Magazine Homepage at HTTP://www.penthouse.mag.

estimated annual revenues of $100 million.[9] Such marketing success has fueled an increase in the size of the pornography industry—$10 *billion* annually, according to conservative estimates.[10]

These disturbing trends have resonated with the American people. A 1995 *Newsweek* poll found that 85% of Americans are concerned about pornography being too available to young people through the Internet, and 80% are concerned about "virtual stalking" through e-mail messages.[11] *Internet* magazine warns:

> Few parents—no matter how liberal their political views—want their children exposed to some of the material that's freely available at the fringes of the Internet. No educator can deny the problem: With just a few clicks, a youngster can summon images that would be ruled offensive by any school board anywhere.[12]

The public is right to be concerned. As we demonstrate below, exposure to sexually-explicit speech on the Internet will gravely harm children.

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[9] Anthony Flint, *Skin Trade Spreading Across U.S.*, Boston Sunday Globe, Dec. 1, 1996, at A1.

[10] *Id.*

[11] Charles S. Clark, *Regulating the Internet*, CQ Researcher, June 30, 1995, at 565.

[12] *Safe Computing*, Internet, Sept. 1996, at 49.

B. *Many Children Will Be Harmed from Exposure to Sexually-Explicit Speech on the Internet.*

Exposure to pornography harms children. An individual's sexual identity develops gradually through childhood and adolescence. As they grow up, children are especially susceptible to influences affecting their development. Moreover, information about sex in schools, and presumably, in most homes, comes in age-appropriate incremental stages based on what parents, educators, physicians, and social scientists have learned about child development. Pornography distorts this natural development of personality.

> [I]f the early stimulus is pornographic photographs, the adolescent can be conditioned to become aroused through photographs. Once this pairing is rewarded a number of times, it is likely to become permanent. The result to the individual is that it becomes difficult for the person to seek out relations with appropriate persons.[13]

When pornography is readily accessed, this "simple" way to gratify sexual desires can lead to a deviation from healthy development in which "pictures replace people." Because pornography encourages neither tenderness nor caring (and typically quite the opposite), it can negatively influence a

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[13] Jerry Bergman, Ph.D., *The Influence of Pornography on Sexual Development: Three Case Histories*, IX Family Therapy 3, 1982, at 265.

child's understanding of his own sexuality and the sexuality of those around him.[14]

To children, pornography "educates" by presenting new information. That information about human sexuality is not only highly inaccurate, but misleading. Photographs, videos, magazines, and virtual games that depict rape and the dehumanization of females in sexual scenes constitute powerful but deforming tools of sex education. In addition, pornography portrays unhealthy or antisocial kinds of sexual activity, such as sadomasochism, abuse, and humiliation of females, involvement of children, incest, group sex, voyeurism, sexual degradation, bestiality, torture, objectification, and sanction of "the rape myth."[15] Unlike the sort of education provided in a classroom, exposure to pornography teaches children the rudiments of sex without adult supervision or moral guidance.

Pornography inundates children's minds with graphic messages about their own bodies and their own sexuality.[16]

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[14] *See* John O. Mason, Ph.D., Dr. P.H., Assistant Secretary for Health, Address to the Religious Alliance Against Pornography, *The Harm of Pornography*, at 2 (Oct. 26, 1992).

[15] VICTOR CLINE, PORNOGRAPHY'S EFFECTS ON ADULTS & CHILDREN 13 (1994); *see also*, Neil M. Malamuth & Joseph Ceniti, *Repeated Exposure to Violent and Non Violent Pornography: Likelihood of Raping Ratings and Laboratory Aggression Against Women*, 12 Aggressive Behavior 129-37, U.C.L.A. (1985).

[16] Dr. Gary Brooks, assistant chief of psychology service at the Department of Veterans Affairs and awarded the American Psychological Association's 1996 Practitioner of the Year Award for his work in men and masculinity has coined the phrase "Centerfold Syndrome" to describe a

These images create chemically encoded messages on the brain that can remain in a child's memory through adulthood.[17] Children generally do not have a natural sexual capacity until between 10 and 12 years old. Pornography unnaturally accelerates that development. By short-circuiting the normal development process and supplying misinformation about their own sexuality, pornography leaves children confused, changed, and damaged.[18] Indeed, clinical research suggests that exposure to pornography can permanently damage even healthy and innocent children.

> [T]here seems little doubt that there are at least some people—even those who are initially healthy—who can be eventually harmed through repeated exposure to pornography. In my clinical work, I find pre-teen or

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disorder resulting from the constant bombardment with airbrushed sexual images of women. "Men who participate in such activities as centerfold-aided masturbation, watching pornographic films . . . often become deeply depressed." As a result of a steady diet of "regular pornography, men can display such symptoms as voyeurism, objectification (obsessive fetishism over body parts that interferes with the ability to have relationships with an actual person), the need for validation (easily threatened by women and other men), trophyism (treating women as collectibles), and incapable of intimacy. The tragedy of saddling a generation of young people with these stifling symptoms is self-evident. *See* GARY R. BROOKS, PH.D., THE CENTERFOLD SYNDROME (1995).

[17] *See generally*, James L. McGaugh, Univ. of Calif., Irvine, *Preserving the Presence of the Past*, 38 American Psychologist 161 (1983) (concluding that human memory is formed in part by the release of the chemical epinephrine, which, upon emotional arousal, leaves behind an imprint on the brain.).

[18] Interview with Ann Burgess, Professor of Nursing, Univ. of Pennsylvania, (Jan. 15, 1997).

> adolescent males, who are mostly innocent and uninformed, being particularly vulnerable to these negative and addictive effects.[19]

What we know regarding the sexualization of children and the effects of pornography on adults demonstrates that allowing children to consume pornography will have baneful social consequences.

> Our children live in a society whose psychological and social contexts do not stress the differences between adults and children. We may safely assume that media have played an important role in the drive to erase differences between child and adult sexuality . . . . [S]ex is transformed from a dark and profound adult mystery to a product that is available to everyone—let us say, like mouthwash or underarm deodorant. One of the consequences of this has been a rise in teen-age pregnancy . . . . Another and grimmer consequence of adult-like sexual activity among children has been a steady increase in the extent to which youth are afflicted with venereal disease. . . . The traditional restraints against youthful sexual activity cannot have great force in a society that does not, in fact, make a binding distinction between childhood and adulthood.[20]

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[19] VICTOR CLINE, PORNOGRAPHY'S EFFECTS ON ADULTS & CHILDREN 15 (1994); *cf.* Brown v. Board of Educ., 347 U.S. 483, 494 (1954) (concluding that racial discrimination in public schools "affect[s] [children's] hearts and minds in a way unlikely ever to be undone.")

[20] Neil Postman, *The Disappearance of Childhood*, at 137 (1994).

In addition, one of the more insidious attributes of pornography is that it creates an appetite that, for many, is self-perpetuating and addictive.[21] One study revealed that among 932 sex addicts, 90% of the men and 77% of the women reported pornography as significant to their addictions. The study also revealed that two common elements in the early etiology of sexually addictive behavior are childhood sexual abuse and frequent pornography accompanied by masturbation.[22] The habitual or frequent consumption of pornography can result in a diminished satisfaction with milder forms and a corresponding desire for more deviant, violent, paraphiliac, and other illegal materials[23] that are now easily accessible over the Internet in newsgroups free of charge. Finally, exposure to pornography can lessen one's repulsion to it and one's recognition of its potential harms.[24]

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[21] VICTOR CLINE, PORNOGRAPHY EFFECTS: EMPIRICAL & CLINICAL EVIDENCE, at 2-3 (1990); *see also* Ann Burgess, Ph.D., *Pornography—Victims & Perpetrators, Symposium on Media Violence & Pornography*, Proceedings Resource Book and Research Guide 173-83 (1984).

[22] Patrick Carnes, *Don't Call it Love: Recovery from Sexual Addictions*, (1991).

[23] *See* H.J. Eysenck, *Robustness of Experimental Support for the General Theory of Desensitization, in Pornography and Sexual Aggression*, at 314 (1984); D. Zillmann, *Effects of Prolonged Consumption of Pornography, in Pornography: Research Advances and Policy Considerations*, at 129 (1989).

[24] Zillmann, *supra* note 23, at 129.

The danger to children stems, at least partly, from disturbing changes in attitude which pornography causes. Replicated studies have demonstrated that exposure to significant amounts of increasingly graphic forms of pornography has a dramatic effect on how adult consumers view women, sexual abuse, sexual relationships, and sex in general. These studies are virtually unanimous in their conclusions:

> If you expose male subjects to six weeks' worth of standard hard-core pornography . . . you find changes in attitudes towards women. The subjects become more callused towards women. You find a trivialization towards rape, which means after six weeks of exposure, male subjects are less likely to convict for a rape, less likely to give a harsh sentence to a rapist if in fact convicted.[25]

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[25] Edward Donnerstein, Ordinances to Add Pornography to Discrimination Against Women, Statement at Public Hearing of Minneapolis City Council Session (Dec. 12, 1983); *see also* Luis T. Garcia, *Exposures to Pornography and Attitudes About Women and Rape: A Correlative Study*, Vol. 22, 1853, AG, at 382-83 (1986) (finding that "[s]ubjects with a greater degree of exposure to violent sexual materials tended to believe that: (a) women are responsible for preventing their own rape, (b) rapists should not be severely punished, and (c) women should not resist a rape attack; in addition, researchers found that exposure to violent sexual materials correlated significantly with the belief that rapists are normal); Dolf Zillmann, *Effects of Prolonged Consumption of Pornography, in* PORNOGRAPHY: RESEARCH ADVANCES & POLICY CONSIDERATIONS (D. Zillmann & J. Bryant eds., 1989); N. Malamuth & J. Ceniti, *supra* note 39, at 129-137 ("[S]tudy . . . results consistently showed a relationship between one's reported likelihood to rape and responses associated with convicted rapists such as sexual arousal to rape stimuli, callousness attitudes toward rape, beliefs in the rape myths, and hostility towards women").

This dulling of the moral senses can affect the safety of women. As youth consume dramatically greater quantities of pornography, and as the Internet exposes them to a greater range of violent and deviant forms of sexual conduct than ever before available, it is not irrational to fear that society could regress in its sense of the viciousness and immorality of rape. Children and adolescents who "learn" by early exposure to pornography will more easily accept the idea of forced sex as reasonable and justified. Indeed, studies have found that exposure to hard-core pornography has a similar effect on women, who also become less sympathetic to rape victims in the evaluation of rape trials.[26] The biases encouraged by pornography "may contribute to the reluctance of many women to report rape and to the relatively low likelihood that such offenses will be classified as 'founded' cases."[27]

Because pornography encourages sexual expression without responsibility, it endangers children's health. Rates of venereal disease and rape are already extremely high. In the United States, about one in four sexually experienced teenagers acquires an STD every year, resulting in three million cases of teenage STDs.[28] Infectious syphilis rates have more than doubled among teenagers since the mid-1980s. One million American teenage girls become pregnant each

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[26] Daniel Linz, *Exposure to Sexually Explicit Materials and Attitudes Toward Rape: A Comparison of Study Results*, 26(1) J. SEX RES. 50-84 (Feb. 1989).

[27] L. CLARK & D. LEWIS, RAPE: THE PRICE OF COERCIVE SEXUALITY (1977).

[28] *Facts in Brief*, The Alan Guttmacher Institute (1994).

year.[29] As more and more children become exposed not only to soft-core pornography, but also to explicit deviant sexual material, society's youth will learn an extremely dangerous message: sex without responsibility is acceptable. [30]

Besides the health dangers, exposure to pornography threatens to make children the victims of crime. Research gathered over the past few decades demonstrates that pornography contributes to sexual assault, including rape and the molesting of children.[31] Researchers universally acknowledge that sexual violence is at least partly attributable to the consumption of pornography. "Virtually all lab studies establish a causal link between violent pornography and the commission of violence. This relationship is not seriously debated in the research community."[32] The June 1986 Report of the Surgeon General's Workshop: "Pornography and Public Health," reported that "the circumscribed links between exposure to pornography and aggression toward women

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[29] *Id.*

[30] Research has shown that "males who are exposed to a great deal of erotica before the age of 14 are more sexually active and engage in more varied sexual behaviors as adults than is true for males not so exposed." K. E. Davis and G. N. Braucht, *Exposure to Pornography, Character and Sexual Deviance*, 7 Technical Reports of the Commission on Obscenity and Pornography, at 7.

[31] *See* S. Rep. No. 102-372, 102nd Cong., 2nd Sess. 23 (Aug. 12, 1992) (Pornography Victims Compensation Act of 1992, Senate Comm. on the Judiciary).

[32] Edward Donnerstein, *Aggressive Erotica and Violence Against Women*, 19(2) J.PERS. & SOC. PSYCHOL 269-77 (1980).

. . . have been scientifically demonstrated."[33] The reality that repeated exposure to hard-core pornography is a significant factor in the commission of sex crimes against women is reason enough for concern. But sexual violence victimizes children as well as women. Child molesters often use pornography to seduce their prey, to lower the inhibitions of the victim, and as an instruction manual.[34] "Eighty-seven percent of female child molesters and 77% of male child

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[33] *The Report of the Surgeon General's Workshop: Pornography and Public Health*, June 22-24, 1986, at 15-18; *see also* Edward Donnerstein, Statement Made at Public Hearing on Ordinances to Add Pornography as Discrimination Against Women, Minneapolis City Council, Sess. 1, Dec. 12, 1983 (revealing that in his study, "222 undergraduate males were administered an attitudes survey examining pornography use, attitudes, and self-reported likelihood of rape (LR) or using sexual force (LF). Nonviolent pornography was used by 81% of subjects within the previous year, whereas 41% and 35% had used violent and sexually violent pornography respectively. 27% of subjects indicated some likelihood of raping or likelihood of using sexual force. Discriminate function analysis revealed that use of sexually violent pornography and acceptance of interpersonal violence against women were uniquely associated with likelihood of using sexual force and likelihood of raping.")

[34] VICTOR CLINE, PORNOGRAPHY EFFECTS: EMPIRICAL & CLINICAL EVIDENCE, at 2-3 (1990) ("We also have a great deal of information gained from studies treating sex offenders, suggesting that pornography is often used by them as a facilitator or "training manual" in not only acquiring their own deviation, but also as a device to break down the resistance and inhibitions of their victims or targets of molestation—especially when these are children or juveniles"); *see also* Ann Burgess, Ph.D., *Pornography—Victims & Perpetrators, Symposium on Media Violence & Pornography*, Proceedings Resource Book and Research Guide 173-83 (D. Scott ed., 1984).

molesters studied admitted to regular use of hard-core adult pornography."[35]

In short, the scientific research is overwhelming that children are harmed by pornography in a multiplicity of ways. The risk of that harm coming to pass is magnified to an unprecedented degree because of the accessibility to children of indecent and obscene materials on the Internet.

C. *Neither Parental Supervision Nor Software Blocking Programs, Standing Alone, Can Effectively Guard Children From Sexually-Explicit Material on the Internet.*

End-user software blocking programs do not effectively prevent children from accessing on-line pornography.[36] Such software is woefully ineffective because on-line pornography distributors play a "shell game" of setting up new sites whenever they are on a list of blocked sites, and because many children are computer-savvy enough to disable or bypass the software.[37] Even if software could be created that could out-

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[35] W. L. Marshall, Ph.D. , *Pornography and Sexual Offenders*, *in* PORNOGRAPHY: RESEARCH ADVANCES AND POLICY CONSIDERATIONS 189 (D. Zillmann & J. Bryant eds., 1989).

[36] Appellees promote "PICS" (Platform for Internet Content Selection) as a way for content providers to be accountable. Yet PICS is designed to be a completely voluntary system, and still depends upon end- users employing software to make it work.

[37] *See* Carlos Tejada, *Are My Kids Safe*, Wall St. J., Dec. 9, 1996, at R14 (describing how an ingenious teenager posted a message on the Internet, requesting instructions how to disable the filtering software on his home computer, and "received several effective answers").

guess and out-maneuver the best efforts of those who seek to defeat it, its effectiveness would still be limited to those children whose parents had the knowledge and financial resources to use it, along with the money and time to maintain the necessary software updates.[38]

Moreover, even the most diligent parental supervision and the best content-filtering software at home do not prevent a young person determined to find pornography on the Internet. Home computers are only one port of entry into cyberspace. Children can reach the Internet in the homes of their friends and neighbors, where computers may have no filters installed. Last year, two 15-year old boys in St. Petersburg, Florida downloaded pictures of child pornography and bestiality from the Internet onto floppy disks and took them to school, where they then sold them for $5 each.[39] Limited end-user blocking software is available in the marketplace to install on home computers, yet it was clearly ineffective in protecting the Florida youths or their classmates from dangerous material, just as it will be with the millions of other children. This is not surprising, given the reckless attitude of distributors of pornography on the Internet that they bear no legal duty to prevent children from accessing their materials.

Indeed, assuring children filter-free access to the Internet threatens to become an institutionalized policy. The American Library Association, the lead Plaintiff in *ALA v. U.S. Dept. of*

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[38] Kathryn Montgomery & Shelley Pasnick, Center for Media Education, *Web of Deception* (Mar. 1996).

[39] Susan Clary, *2 Teens Charged in Computer Porn Case*, St. Petersburg Times, May 21, 1996, at 3B.

Justice, "discourages public libraries around the country from using blocking software."[40] The American Civil Liberties Union is contemplating suit against a Florida library system for installing filtering software—the very means the ACLU, in its arguments to the court below, claimed are sufficient to protect children from pornography.[41] The Mayor of Lincoln, Nebraska has announced that he "does not think the city should install software filters to block access to offensive materials through Internet links at Lincoln City Libraries computer terminals;" instead, "monitoring Internet use by a youngster is a parent's job."[42] Although parental supervision in a public library may address the danger for some children, it is manifestly impractical for obvious reasons. Rather than run the risks, many parents may steer clear of the public library altogether.

President Clinton has pledged that every American classroom will be connected to the Internet by the year 2000.[43] Parents cannot monitor their children's activities on-line while they are at school. Although some schools have taken advantage of content-filtering software, others have policies that *prohibit* its use. For example, in one school district, a

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[40] Rebecca Vesely, *Library Blocks Porn, and May Block Rights*, Jan. 7, 1997, at HTTP://www.com/news/story/1289 html.

[41] *Id.*

[42] Ann Harrell, *Library Net Access Up to Parents*, Lincoln J. Star, Jan. 7, 1997, at 1A.

[43] President William J. Clinton, *State of the Union Address* (Jan. 23, 1996), HTTP://www.democrats.org.80/bottomline/challenge/state of union.

letter was sent home with students notifying parents that the children will have access to the Internet, that sexually explicit material is potentially accessible, and that the only way parents can be reasonably sure their children are not exposed to material that is "illegal, sexually explicit, or offensive to certain racial or ethnic groups"[44] is to refuse to sign the school's hold harmless agreement—in which case the child would not be given access to the Internet. In this school district, the parents' only options are to risk their children's exposure to harmful material or deny them the educational opportunities offered by the Internet.

For these reasons, the district court's suggestion that "parents can supervise their children's use of the Internet or deny access until they reach an appropriate age," *ACLU v. Reno*, 929 F. Supp. 824, 883 (E.D. Pa. 1996), is untenable. On the one hand, neither parental supervision nor content-filtering software is sufficient to prevent children from accessing pornography on the Internet. On the other hand, denying children access to the Internet deprives them of a vital educational resource. The legal restrictions imposed by the CDA are not only helpful but necessary, if children are to be effectively shielded from pornography and the dangers it poses, while benefitting from the Internet's vast power to convey knowledge.

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[44] Westside (Omaha, NE) Community School's Application for Student Internet Account, *Statement of Rights and Responsibilities* (Amended May 2, 1994).

D. Compliance With The CDA Is Technically Feasible

The district court's conclusion that compliance with the CDA is technically and economically infeasible is erroneous. Judge Dalzell's theoretical predicate for that proposition—that "the strength of the Internet is chaos," *ACLU*, 929 F. Supp. at 883—ignores the essential characteristics of the Internet. Rather than chaos, the defining characteristic of this technology is a critical orderliness, without which it would not work. A programmer attempting to format a Web site in anything other than hypertext markup language (HTML), for example, would produce only incompatibility with the Internet. The Internet "exists and functions as a result of the fact that hundreds of thousands of separate operators of computers and computer networks independently decided to use common data protocols." *Id.* at 832. The word "independent" does not reflect a random, chaotic, or spontaneous coalescing of elements, but rather the conscious decisions of intelligent human beings to align with technical standards promulgated by other intelligent human beings to advance a common objective. It is thus incorrect that the Internet does not contain sufficient orderliness for compliance with the CDA to be feasible.

For instance, the lower court's conclusion that the CDA is unconstitutional was based in part on the perceived difficulties of age-verification, yet the absence of age-verification on the majority of sites on the Internet is the result of the apparent preference of the Internet culture, rather than any technological limitation. That this is so is evident in the number of sites where age-verification is already in place. A

1995 guidebook[45] on Internet law advised Internet Service Providers (ISPs) that "making indecent messages available is not especially risky, as long as they are effectively denied to minors."[46] Some ISPs are already establishing age-restricted areas within their servers for "adults-only" materials.[47]

Many commercial Web sites and bulletin board services that utilize credit card verification currently comply with the CDA.[48] Commercial and non-commercial Web content providers are already beginning to use adult verification

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[45] LANCE ROSE, NETLAW (1995) (written before enactment of the CDA).

[46] *Id.* at iii.

[47] QNSnet is an Internet Service Provider that "restricts access to newsgroups which contain material generally regarded as obscene or pornographic. Access to these groups will only be granted upon presentation of proof of legal age. . . ." *See* QNSnet Terms & Conditions, at HTTP://www.qns.net.80/pricing/termpass.htm.

[48] Unfortunately, however, many commercial sites post free teaser images on their Web sites in an effort to lure subscribers. As a result, by browsing the Web sites of commercial pornographers, children can view an enormous number of sexually explicit pictures without charge. After the CDA passed, but before it was enjoined by the Philadelphia panel, this common practice noticeably ceased. *See, e.g.*, Schmidt, Howard A., 52 Government Exhibits Appended to Direct Testimony Declaration, April 9, 1996, Exhibit nos. 20, 25, 26, 27, & 44 ("If Section 223(d)(1)(B) were upheld as applied to commercial Web sites, most commercial pornographers would likely end their practice of posting sexually explicit material that can be viewed without a credit card or adult ID").

services, [49] digital signatures,[50] and video reflector programs (providing visual verification of age and identity)[51] that allow for age identification.

The Usenet is a controlled access, closed, proprietary, commercial, subscription service that is under the direct control of each ISP, made available by the ISP to its subscribers or users. For an ISP to make any or all Usenet newsgroups available to any of the ISP's users, that ISP must specifically subscribe to and pay for the downfeeds for each news group. Because any ISP in the United States can install and run blocking software on its servers and identify those subscribers or users who are using the ISP's network, the ISP can simply trigger its screening software to exclude access by minors to any or all of the Usenet groups or hierarchies. For example, the University of Oklahoma installed a second newsgroup server, offering one with restricted content available to all users, and one with unrestricted content available only to users identified as at least 18 years old.[52]

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[49] Simons, *supra* note 4, at 52 ("sex also has had an effect on other high-tech markets, ushering in companies that create blocking software and a host of enterprises that authorize digital ID cards. For a monthly or annual fee, these firms verify a Web surfer's age, then issue an identification number that the customer must type in before entering sites that are closed off to underage users").

[50] Utah Digital Signature Act, 46 Utah Code Ann. Ch.3 (1996).

[51] *See Enhanced CU-SeeMe* at HTTP://www.cu-seeme.com. *in White Pine Software Homepage* at HTTP://www.wpine.com.

[52] Pamela Mendels, *Newsgroup Smut Poses Campus Quandary*, N.Y. Times, Dec. 29, 1996.

Other incongruities in the district court's rationale further undercut its logic. For example, while insisting that compliance with the CDA is "either technologically impossible or economically prohibitive," *ACLU*, 929 F. Supp. at 854, or that as yet "no defense is technologically feasible," *id.* at 859, the lower court ignores the provisions of 47 U.S.C. §223 (a)(1)(B). That section proscribes the act of ***knowingly*** initiating the transmission of indecent (or obscene) images or communications "***knowing*** that the recipient of the communication is under 18 years of age" (emphasis added). Obviously, it requires neither technological ingenuity nor economic resources for a pornographer to refrain from sending inappropriate material to someone known to be under 18 years of age. Moreover, the fact that extant obscenity and child pornography laws apply in cyberspace already, yet have not been challenged as technologically or economically unfeasible, further undermines the lower court's argument.[53] As one commentator has argued:

> Internet content and access providers are no more or less able to prevent obscene communications or child pornography from reaching minors (or adults) than they are able to restrict delivery to minors of indecent communication. The arguments made by the plaintiffs in the CDA case about the inability to monitor or control indecent content apply with equal force to monitoring and controlling obscene content; and yet they are not sufficient in the latter context, since both federal and state governments may criminalize obscene communications in any medium. Since content providers

[53] Clapes, Anthony L., *The Wages of Sin: Pornography and Internet Providers*, Computer Lawyer at 8, July 1996.

> and service providers must provide solutions to the problem of obscenity and child pornography, since those solutions are likely to be equally effective in regulating indecent or patently offensive expression as well, the technological impossibility argument is not necessarily a persuasive argument, either factually or legally.[54]

In short, if Internet providers have the technical wherewithal to shield material from children that is technically obscene, then *a fortiori* the technology exists to protect minors from non-obscene but sexually-explicit material. Put another way, the "technical infeasibility" argument proves too much: if valid, it would prove that Internet providers are incapable of adhering to laws designed to prohibit *obscene* materials from being distributed to minors, when that proposition is disputed by no one.

III. TO RESOLVE THE CONSTITUTIONALITY OF THE CDA THIS COURT SHOULD GIVE PARAMOUNT WEIGHT TO THE GOVERNMENT'S INTEREST IN PROTECTING CHILDREN FROM THE DISTRIBUTION OF SEXUALLY-EXPLICIT MATERIAL ON THE INTERNET.

As the research we have documented above shows, exposure to the kinds of sexually-explicit speech centrally covered by the CDA will gravely harm children. The district court erred in failing to apprehend the magnitude of this danger in the unique context of the Internet. This is

[54] Clapes, *supra* note 53, at 9.

the compelling factual predicate that should undergird this Court's resolution of this case.

Because of the unparalleled nature of the Internet, the Court's precedents offer helpful guidance but not a determinative rule. It is clear the Government has a compelling interest in protecting children from the dangers posed by exposure to sexually-explicit materials. *See, e.g., New York v. Ferber*, 458 U.S. 747, 756-57 (1982). The voluminous research we have cited demonstrates beyond cavil that the threat of this harm to children is genuine and not exagerated. *See United States v. National Treasury Employees Union*, 115 S.Ct. 1003, 1017 (1995). Moreover, when applying the First Amendment Free Speech Clause in a new communications medium, the Court has left itself room to fashion rules that fit both the constitutional demand for free speech and the nature of the medium. *See Turner Broadcasting Sys., Inc. v. FCC*, 114 S.Ct. 2445, 2456 (1994). Such a context-sensitive reading of the First Amendment in this case is in keeping with the Court's recent interpretation of the Free Speech Clause in *Denver Area Educational Tele-Communications Consortium, Inc. v. FCC*, 116 S.Ct. 2374 (1996):

> [T]he First Amendment embodies an overarching commitment to protect speech from Government regulation through close judicial scrutiny, thereby enforcing the Constitution's constraints, but without imposing judicial formulae so rigid that they become a straightjacket that disables Government from responding to serious problems. This Court, in different contexts, has consistently held that the Government may directly regulate speech to address

> extraordinary problems, where its regulations are appropriately tailored to resolve those problems without imposing an unnecessarily great restriction on speech.

Id. at 2385.

If ever Congress were confronted with the necessity to "address [an] extraordinary problem[]," *id.*, the regulation of patently offensive materials to children over the Internet is such a case. With the CDA, Congress responded to this concern in the only appropriate way in light of the gravity of the danger to children posed by the distribution of sexually-explicit material. This prohibition affects only as much speech as it must to accomplish its purposes, for no lesser approach is commensurate with the unique nature of the danger to children that distribution of sexually-explicit materials over the Internet poses.

The Court has sufficient flexibility under its prior cases to properly vindicate both the profoundly compelling governmental interest at stake in this case, and the requirements of the First Amendment. When the Court applies the strict scrutiny test, it should give the Government's interest in protecting children the paramount weight it deserves. Under that approach the Court should weigh the cost and inconvenience of preventing children from obtaining access to patently offensive materials against the grievous harm such access would cause, and hold that the safe harbors available under the CDA are sufficiently flexible to prevent the statute from becoming constitutionally vulnerable. With this context-sensitive approach, the Court will have acknowledged the unique

danger posed by the distribution of such speech over the Internet by fashioning a rule that affords children the protection they deserve.

CONCLUSION

The Court should reverse the district court judgment that the CDA is unconstitutional and remove the injunction that now blocks its enforcement.

Respectfully submitted,

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APPENDIX

Enough is Enough (EIE), launched in November 1992, is a non-partisan, non-profit, educational organization whose mission is to restore a social environment in which citizens are free to raise their children and conduct their lives without the intrusion of illegal sexual material or sexual predators. To achieve this vision, EIE educates the public about the existence, availability, and dangers of pornography; enlists public support to make pornographic material unavailable to children; and encourages community efforts to treat pornography's victims. EIE's principal operational goal in 1997 is making the Internet safe for children.

Enough is Enough has been recognized as the leading national anti-pornography organization addressing the issue of computer pornography and child safety on the Internet. Active in drafting and supporting the Communications Decency Act, EIE has fielded over 1,000 media interviews since June 1995. EIE has testified on numerous occasions before House and Senate Committees on a variety of anti-pornography and child protection measures. EIE has also been active in assisting state and local officials to strengthen city ordinances governing sexually-oriented businesses, providing referrals for victim's assistance, and co-sponsoring conferences for pastoral staff and lay leaders, therapists, psychologists and couples on "Understanding Sexual Trauma." Individuals involved with EIE come from varied backgrounds, professions, religions, non-profit organizations and political affiliations.

Childhelp USA, headquartered in Scottsdale, Arizona, has come to the aid of children in distress since 1959. Childhelp is committed to fighting child abuse and neglect with research, treatment, and prevention programs. Childhelp operated the National Child Abuse Hotline (1-800-4-A-CHILD and 1-800-2-A-CHILD for the hearing impaired with TDD equipment), the Nation's only 50-state, 24-hour, toll-free crisis intervention program. The Hotline is staffed by trained counselors and has a data bank of over 63,000 service providers across the country. Childhelp also operates two

residential treatment facilities for the most severely physically and sexually abused children ages 2 through 12. One is located in southern California and one in central Virginia. Childhelp also operates two sexual abuse advocacy centers, one in Knoxville, Tennessee and one in Manhattan, New York. Other services include therapeutic foster homes, Head Start programs, group programs for teen and adult survivors of abuse, training programs for child care workers and foster parents, and education and advocacy initiatives.

Citizens for Family Friendly Libraries (Georgia) (CFFL) was established in 1994 by Jennifer Toombs and Judy Craft. Its objectives are to return local tax-funded libraries to taxpayer control and to protect children from pornography. Currently, CFFL carries out its mission by countering the public libraries' ever-increasing trend toward providing all material to all patrons, including children, no matter how sexually explicit. Because many public libraries are now providing Internet service, the Internet is of particular concern to CFFL.

Computer Power Corporation (CPC) is an Electrical and Electronic Service Company that specializes in Power Quality, Ground Testing, Communications and Technical Systems Management, and operates a state- accredited educational program. CPC supports the CDA and urges that parents, administrators, teachers, the legal community, and the technology industry work together to responsibly manage the Internet for the protection of America's children from pornographers and pedophiles.

D/TEX Investigative Consulting (D/TEX) is dedicated to providing the finest investigative consulting services to decision-makers in the business, financial, and legal communities. D/TEX specializes in many kinds of investigation services, from locating individuals for legal services to commercial and fraud investigations. D/TEX also offers Due Diligence Services and various Consulting Services. In addition, D/TEX tracks criminal activity on the Internet, including illegal use of the Internet by pedophiles.

Family Friendly Libraries (FFL) is a national grassroots network of concerned citizens, librarians and library trustees that believe: (1) in more common sense access policies to protect children from exposure to age-inappropriate materials without parental consent, and (2) in a return to policies placing libraries under maximum local control with more acknowledgment of taxpayer authority and community standards. FFL is non-sectarian, non-profit and educational. Its overall purpose is to unite communities through appeal to society's long-standing responsibility to protect children from harmful or age-inappropriate material, and to adopt parental rights policies that empower parents while advancing democracy by encouraging citizen involvement in the local taxpayer-funded public library decision process. Located in Springfield, Virginia, FFL offers information, advice and encouragement to callers concerned about local public school and library policy. FFL offers solutions that include changes in local or state statutes involving library policies, harmful to minors laws, and parental rights. While FFL does *not* support censorship or encourage removal of collection material, it *does* call upon library professionals to act responsibly to uphold community standards and protect the community's children.

Focus on the Family is a Christian, non-profit organization committed to strengthening the emotional, psychological and spiritual health of children and their families in the United States and throughout the world. Focus on the Family's President, Dr. James C. Dobson, a renowned child psychologist, served on the Attorney General's Commission on Pornography in 1986. Focus on the Family has produced two major videos, "A Winnable War" and "Fatal Addiction." It has also assisted in one book, *Pornography: A Human Tragedy* which directly discusses the harms of pornography to children, men, women and families in America. The videos and book have been seen and read by thousands of concerned citizens nationwide. Focus on the Family daily radio broadcasts dealing with family concerns and interests are heard by more than one million people daily over 1,500 stations. Its monthly magazine has a circulation of 2.1 million. Focus on the Family regularly receives letters and telephone calls from and counsels with families who have

children devastated by pornography, molestation and abuse. Focus on the Family works to preserve and protect the family, and thus has particular knowledge about the impact of child pornography that will be helpful to the Court in this case.

Help Us Regain the Children (H.U.R.T.), a national legal research center and lobbying entity, has inspired state and federal legislative investigations and hearings on sexual abuse and exploitation of children fought in the family courts and child protective system. Several of the legislative proposals crafted by H.U.R.T. have been accepted into the Committee Views accompanying legislation before the U.S. Senate Labor Committee. Child advocates, legal experts, mental health professionals, and parents of sexually abused children have been brought by our center to the attention of state and federal legislatures for the purpose of building a strong record, detailing the severity of the malfunctioning of our courts and social agencies in their role to protect children from predatory harm.

JuriNet, Inc. is a California-based Internet company providing on-line legal information and services, within the Internet's first legal cyber mall, in a safe and enjoyable environment for legal professionals worldwide. JuriNet Inc.'s purpose is to centralize "electronic legal commerce" and provide the legal vertical market worldwide with "one stop" shopping within the Internet environment. The company intends to establish JuriNet, Inc. as a global industry benchmark for self-regulation and responsibility, ensuring that this legal cyber mall represents a safe and enjoyable place for all legal professionals to work, learn and communicate.

Kidz Online is a non-profit educational organization dedicated to introducing young people from all economic levels to the networking technologies that will play a major role in their futures. We are an on-line service just for kids and provide e-mail, monitored chat rooms, a kids news section, and educational non-violent games, in addition to a menu of technical training

opportunities. All content on Kidz Online is screened for inappropriate and adult material.

Laura Lederer, J.D., is a contributor and editor of *Take Back the Night: Women on Pornography* and *The Price We Pay; the Case Against Racist Speech, Hate Propaganda, and Pornography.*

Log-on Data Corporation is a research and development technology firm located in Southern California. The company is committed to protecting children from illegal pornographic materials on-line and has developed a software filter product to assist caregivers in protecting children.

Legal Pad Enterprises, Inc. is a California-based Internet company providing on-line legal information and services in a safe and enjoyable environment for consumers worldwide. Legal Pad Enterprises first debuted on America Online in 1995 and is now accessed only on the World Wide Web, providing consumers globally with legal information and news. Legal Pad caters to adults and children with age-appropriate content and issues. Legal Pad's children's web site, Legal Pad Jr., provides kids and teens quality "edutainment" in an electronic medium where they can safely express themselves interactively via message boards, chats, and newsletters produced by their peers. Legal Pad Jr. is designed to encourage positive attitudes toward, and active participation in, learning how law affects life today and in the future. Legal Pad's "Partnership with Schools" brings together kids, teens and teachers to facilitate and enhance school outreach programs and teach how to travel and communicate safely in cyberspace. Currently, the company employs a cyberspace form of "Neighborhood Watch" within its site through an alliance with Cyber Angels. Legal Pad's electronic field trips unite kids around the world and teach them about on-line safety and opportunities. Legal Pad intends to introduce the first 911 service on the Internet and establish itself as a global industry benchmark for self-regulation and responsibility, ensuring that the entire site provides a safe and enjoyable place to work, learn, communicate and entertain.

Mothers Against Sexual Abuse (MASA) is a national, non-profit organization dedicated to protecting children against the tragedy of sexual abuse by educating society about child sexual abuse, providing referrals for victims, and initiating new legislation. MASA is also actively involved with establishing a comprehensive, nationwide network of organizations, professionals, and ordinary people concerned about the Nation's children. In addition, MASA has developed a court advocacy program that assists victims and aids judicial reform.

National Association of Evangelicals is a voluntary fellowship of evangelical denominations, churches, schools, organizations and individuals. NAE provides an evangelical identification for 42,500 churches from more than 80 denominations and has a service constituency of approximately 27 million through its commissions, affiliates and subsidiary. Its purpose is to provide a means of cooperation and evangelical witness, and one of its primary concerns is the protection of families from the moral pollution that endangers them.

National Coalition for the Protection of Children and Families (NCPCF) was founded in 1983. It assists concerned citizens and community leaders in efforts to significantly reduce sexual exploitation and violence by (a) increasing public awareness of the harm and availability of exploitative and abusive pornography, particularly in the lives of children; (b) supporting the enactment and enforcement, within the parameters of the Constitution, of limitations on pornography; and (c) offering assistance to people whose lives pornography has harmed. NCPCF programs are carried out nationally and include resource development and distribution (including a wide range of research reports documenting the harms of pornography); victim assistance (including seminars, training counselors, therapists and church pastors to directly help addicts, spouses of addicts and victims and survivors of sex abuse); and assistance and training to law enforcement. NCPCF's work in the field over the last fourteen years provides a depth of experience to contribute to the Court's resolution of this case.

National Council of Catholic Women (NCCW) is a nationwide federation of 8,000 Catholic women's organizations representing millions of Catholic women. NCCW acts through its affiliated organizations to support, empower and educate all Catholic women in spirituality, leadership and service. NCCW programs respond with Gospel values to the needs of the Church and society in the modern world.

National Political Congress of Black Women, Inc. (NPCBW) is a non-partisan, independent political organization which encourages all African American women to participate in the political and economic process as voters, candidates, policy makers, fund-raisers and highly visible role models. NPCBW serves as a catalyst for the election and appointment of African American women to all levels of government and the political process. In addition, NPCBW encourages mentoring and political involvement, offers training in the political process, and advocates public policy positions beneficial to the needs and aspirations of African Americans, at all levels of government.

Omaha for Decency (OFD) is a non-profit organization that educates citizens primarily in the Omaha metropolitan area about the principle that obscenity is not protected speech under the First Amendment, and about the harmful effects of pornography. OFD works with local and state law enforcement agents in cases regarding the illegal distribution of pornography. It is also active in urging citizens to utilize their right to fight pornography through working to improve laws, by asking law officials to enforce laws, and by communicating concerns about the harms of pornography to merchants, the media, and others.

One Voice/The American Coalition for Abuse Awareness is dedicated to improving the quality of life for survivors of sexual abuse and incest, as well as physical and emotional abuse. Located in Washington, D.C., its purpose is to build a comprehensive network of attorneys across the country who are committed to furthering the rights of survivors under the law; to develop educational outreach programs; to facilitate a national grassroots movement to support the

projects in progress on the issues of sexual abuse and incest; and to advocate changes in the statutes of limitations for states. One Voice believes that the connection between childhood abuse and child pornography has been established beyond any doubt and supports the enforcement of laws aimed at preventing the production and distribution of child pornography. The American Coalition for Abuse Awareness (ACAA), a public policy project of One Voice, is a coalition of individuals and groups committed to resolving the issue of child sexual abuse. In addition, the ACAA is committed to the development of public and media awareness of the issue of the sexual abuse of children; the development of educational outreach programs for members of the judicial and legislative branches of government; and establishment of a national body to make policy recommendations on issues regarding childhood sexual abuse, the protection of children, and adult survivors of abuse.

Oklahomans for Children and Families (OCAF) is a non-profit organization founded by George Harper in 1984. It was originally called Oklahomans Against Pornography. With Bob Anderson currently serving as president, OCAF is an alliance of concerned citizens, including civic, business, religious, health care and educational organizations. Its mission is to reduce sexual violence and the victimization of women and children in Oklahoma County and throughout the State of Oklahoma by eliminating child pornography and other illegal pornography and regulating sexually-oriented businesses and sexual materials harmful to minors. OCAF seeks to accomplish this by educating Oklahomans regarding the danger and harm of pornography, by mobilizing concerned citizens to action, by working cooperatively with justice officials to enforce obscenity/child protection laws, and by giving assistance to victims.

Religious Alliance Against Pornography (RAAP). Founded in 1986, RAAP is an inter-faith alliance of religious leaders. Members include senior representatives of the Protestant, Roman Catholic, Eastern Orthodox, Jewish, and Latter-day Saint communities committed to addressing the problems of illegal hard-core and child pornography. RAAP is united in its strong commitment to constitutional freedoms guaranteed by the First

Amendment, just as it is united by its fundamental convictions about human dignity. RAAP opposes government censorship and promotes enforcement of all laws governing illegal pornography. Currently led by Dr. Jerry R. Kirk, and formerly co-led by the late Joseph Cardinal Bernardin, RAAP has worked to encourage enforcement of laws on exploitation, child pornography and illegal obscenity. The Alliance has labored to encourage society to take seriously its responsibility to shield children from pornography and the worst impulses of adults. Most recently, the Alliance held a national summit in Washington, D.C., on the problem of child sexual exploitation. RAAP has made extensive efforts in combating the U.S. role in international child sex tourism. RAAP's efforts have focused on a central principle: encouraging a deeper moral discussion and educating citizens with a heightened awareness of their communal responsibilities as an essential partner to their private rights.

The Salvation Army is concerned that the dignity of mankind should be preserved and deplores the increasing pornography and blasphemy infecting books, magazines and newspapers, and featured in the theater, at the movies, in radio and television, and on the Internet. The Salvation Army maintains its stand against evils that threaten the quality of personal and national character and seeks to arouse public conscience against such evils. The Salvation Army wholeheartedly supports the education of people on matters relating to the sanctity of proper sexual relationships based on the teachings of the New Testament.

Victims' Assistance Legal Organization, Inc. (VALOR) was founded in 1981 as a national non-profit organization dedicated to promoting the rights of victims of crime in the civil and criminal justice systems. With support from foundations, individuals and government grants, VALOR's recent activities include: producing its 1995 and 1996 *National Crime Victims Rights Week Resources Guides*; developing a Model Restitution Reform Project; and providing leadership on reforms in the areas of child abuse, juvenile justices, sentencing, and parole.

Weitzman, Lenore, Ph.D., is a sociologist who studies law and the social effects of legal rules. She is the author of the award-winning book, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*, three other books and numerous articles. She is currently Professor of Sociology and Law.

WheelGroup Corporation is a leading-edge network security company specializing in intrusion detection and the prevention of unauthorized or illegal activity on computer networks. Although a supporter of First Amendment rights, WheelGroup is adamantly opposed to illegal communications such as child pornography. The company has provided technical advice to Enough is Enough on the matter of the prevention of such activity and is a strong advocate that technologies (such as those it has produced) exist in the commercial market for effectively preventing illegal communications activities.